Supreme Court, U.S.
FILED

96 271 AUG 19 1996

No. OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1995

CLARA REDDING, individually and as legal guardian of PATRICK LOUIS BELL, a minor

Petitioners

v.

INDEPENDENT SCHOOL DISTRICT NO. 33 OF CREEK COUNTY, OKLAHOMA, a/k/a BOARD OF EDUCATION, SAPULPA SCHOOL DISTRICT, STATE OF OKLAHOMA a/k/a SAPULPA MIDDLE SCHOOL; TIMOTHY LYNN HOPPE, an individual; DR. CHARLES B. DODSON; SUZANNE WILLIAMS; and JANE and JOHN DOES 1-25

On Petition For Writ Of Certiorari To The Oklahoma Court of Appeals, Division II Cert. denied by Oklahoma Supreme Court

---

PETITION FOR WRIT OF CERTIORARI

Thomas S. Evans OBA# 10642
Counsel of Record
EVANS LAW CENTER
P.O. Box 2646, Ponca City, OK 74602
(405) 762-2889

43 pp

ISSUES

1. Can a fourteen (14) year old mentally challenged special education student be denied access to the Courts under Oklahoma's Governmental Tort Claims Act when: 1) notice of intent to file a claim is timely sent, but apparently to the wrong place; and 2) the targeted political subdivision actually knew that a claim against them was to be filed and had already hired a law firm to defend the potential claim?

and

2. Did substantial compliance with the notice requirement take place when discussions about a lawsuit on behalf of the minor child occurred between the lawyers representing the parties?

TABLE OF CONTENTS

ISSUES i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iv

LIST OF OFFICIAL OPINIONS vi

JURISDICTION OF THIS COURT vii

CONSTITUTIONAL PROVISIONS RELIED UPON viii

PETITION FOR WRIT OF CERTIORARI 1

STATEMENT OF FACTS 1

FIRST REASON FOR REVIEW 3

THE OKLAHOMA GOVERNMENTAL TORT CLAIMS ACT 51 O.S. §151 ET SEQ. VIOLATED APPELLANT'S DUE PROCESS RIGHTS OF HIS DUEL PROTECTIVE STATUS

SECOND REASON FOR REVIEW 5

THE APPELLANTS SUBSTANTIALLY COMPLIED WITH OKLAHOMA'S GOVERNMENTAL TORT CLAIMS ACT, 51 O.S. §151 ET SEQ.

CONCLUSION 9

APPENDIX

CREEK COUNTY COURT'S JOURNAL ENTRY OF JUDGMENT

COURT OF APPEALS DIVISION II STATE OF OKLAHOMA'S UNPUBLISHED DECISION

OKLAHOMA SUPREME COURT'S DENIAL OF APPELLEE'S PETITION FOR WRIT OF CERTIORARI

EXHIBIT "A" -- AFFIDAVIT OF CHARLES L. RICHARDSON

EXHIBIT "B" -- LETTER FROM CHARLES RICHARDSON TO THE SAPULPA SCHOOL SUPERINTENDENT DR. CHARLES DODSON DATED FEBRUARY 8, 1994

TABLE OF AUTHORITIES

U.S. CONSTITUTION AMENDMENT 5 viii

U.S. CONSTITUTION AMENDMENT 14 . . . . . viii-xi
3, 4

51 O.S. §151 ET SEQ 1, 3, 4
5, 7, 8

CRONNON v. STATE OF ALABAMA 3

557 F.2d 472 , after remand, 587 F.2d 246, cert denied
99 S. Ct. 1542, 440 U.S. 974, 59 L.Ed.2D 792
(C.A. 5th Cir. 1979)

ALDENS INC. v LAFOLLETTE 3

552 F.2d 745, cert. denied, 98 S. Ct. 236, 434 U.S. 880,
54 L.Ed.2d 161 (C.A. Wis. 1977)

REHBOCK v. DIXON 3

458 F. Supp. 1056 (D.C. Ill. 1978)

GOLDBERG v. KELLY 3

90 S. Ct. 1011 (1970)

KENNEDY v. ROBB 4

547 F.2d 408, Appl. denied, 97 S. Ct. 1325, 430 U.S.
913, 51 L.Ed.2d 592, cert. denied, 97 S. Ct. 2687, 431
U.S. 959, 53 L.Ed.2d 278 (C.A. 5th, Cir. 1979)

LONG v. THORNTON 4

82 F.R.D. 186 (D.C. Ill. 1979)

LUCAS v. INDEPENDENT PUBLIC SCHOOL DISTRICT #35 OF HOLDENVILLE 4, 6

674 P.2d 1131 (Okl. 1983)

ADDANTE v. VILLAGE OF ELMWOOD PARK 4

541 F. Supp. 497 (D.C. Ill. 1982)

CONWAY v. OHIO 5, 7, 8

669 P.2d 766 (Okl. 1983)

WALKER v. CITY OF MOORE 6

836 P.2d 1289 (Okl. 1992)

RIERDON v. WILBURTON BD. OF ED. 6

611 P.2d 239 (Okl. 1980)

WOODROW v. UNIVERSITY OF OKLAHOMA 6

51 O.S. SUPP. 1993 §156(C) 6

51 O.S. SUPP. 1993 §156(D) 6

OFFICIAL OPINIONS

District Court of Creek County, dismissed action on December 13, 1995. The Court granted Appellee's Motion for Summary Judgment.

Oklahoma Division II Court of Appeal upheld the ruling by Creek County Court on March 5, 1996.

Oklahoma State Supreme Court denied certiorari on May 22, 1996.

JURISDICTION

(1) On December 13, 1995, the Honorable Judge Donald Thompson granted the Appellee's Motion for Summary Judgment and dismissed the claim of the Appellant.

(2) Appellants did not put forth a Motion for Rehearing at the trial court level, instead Appellant appealed directly to the Oklahoma Supreme Court, which assigned the case to Oklahoma Court of Appeals, Division II.

(3) The Appellants rely upon the United States Constitution amendments Five (5) and Fourteen (14) for review by this Court. These were first brought up in arguments during the hearing by the Appellee, as well as in Appellee's first Appeal Brief to the Oklahoma Court of Appeals, and in Appellee's Petition for Certiorari to The Oklahoma Supreme Court, whereby granting this Court jurisdiction. Supreme Court Rule 10(C) grants this Court the authority to review State Court decisions which decide important questions of federal law.

(4) Pursuant to Rule 29.4(C) the Appellant will send to the Oklahoma State Attorney General, a copy of 28 U.S.C. §2403(B) as well as a co-copy of this Brief, so as to inform them the constitutionality of an Oklahoma Law is potentially going to be reviewed by this Court.

CONSTITUTIONAL PROVISIONS RELIED UPON

The Constitutional Provisions which are relied upon by the Appellants in this case stem from due process which are set forth in the United States Constitutional Amendments Nos. Five (5) and Fourteen (14). Amendment No. Five (5) states as follows:

> "No person shall be held for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." U.S. Const. Amend. 5.

Amendment No. 14 states as follows:

> **Section 1. Citizens of the United States.**
>
> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein

privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sec. 2. Representatives--Power to reduce apportionment.

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Sec. 3. Disqualification to hold office.

No person shall be a Senator or Representative in Congress, or Elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Sec. 4. Public debt not to be questioned--Debts of the Confederacy and claims not to be paid.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss of emancipation of any slaves; but

all such debts, obligations, and claims shall be held illegal and void.

Sec. 5. Power to enforce amendment.

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.
U.S. Const. Amend. 14

PETITION FOR WRIT OF CERTIORARI

COME NOW the Appellants, Clara Redding, as legal guardian of Patrick Louis Bell, and hereby move that this Court grant Certiorari in the above styled case, for the following reasons:

1. The Trial Court erred in its granting of Appellee's Motion for Summary Judgment on October 23, 1995; subsequently, the Oklahoma State Court of Appeals erred in upholding said decision with the Oklahoma Supreme Court denying certiorari on May 22, 1996.

2. Said errors were based upon Appellee's Motion for Summary Judgment for failure to comply with Oklahoma Governmental Torts Claim Act, 51 O.S. §151 et seq., even though the Appellants showed substantial compliance with said act.

3. Due to the Trial Court's error and subsequent Appeal Court's error, the Appellants due process rights were violated.

STATEMENT OF FACTS

This action stems from a series of sexual molestations suffered by minor/student Patrick Louis Bell by Timothy Lynn Hoppe, a special education instructor's aid from the Sapulpa Middle School. Appellant Bell was a student in Appellee Hoppe's care. These numerous acts took place prior to and on November 8, 1993.

After gaining knowledge of the sexual improprieties of Appellee Hoppe, Appellant Redding, who is the legal guardian of Bell, removed Bell from the Sapulpa Middle School and retained as her attorney Gary Richardson. On January 26, 1994, Mr. Richardson sent a Tort Claim Notice addressed to the Sapulpa School District, c/o Office of Public Affairs, Purchasing Division, Office of Risk

Management Administrator. On February 8, 1994, in a letter from Appellants original attorney, Mr. Richardson, to the Superintendent of the Sapulpa Middle School, Appellee Dr. Charles Dodson, there is a reference to a meeting between the Appellant, Appellant's attorney, and Appellee Dodson, which included a discussion concerning a potential lawsuit. Appellee had retained counsel by the name of Mr. Doug Mann, who on several occasions had discussed with Richardson a lawsuit being filed on behalf of the Appellant Mr. Bell against the Appellee Sapulpa School District and Appellee Tim Hoppe. (Affidavit of Gary Richardson attached hereto in Appendix as Exhibit "A").

On May 10, 1994, Appellant Redding terminated her contract with Mr. Richardson, and shortly thereafter retained the services of attorney Thomas S. Evans as her counsel. On October 18, 1994, a Petition for Negligence was filed on behalf of Appellant Redding against the Appellees, and it should be duly noted that the Petition was filed within one year of Appellant Redding learning of the sexual molestation by Appellee Hoppe and thereby filing took place before the statutory limitations set forth in the Oklahoma Governmental Tort Claims Act.

On April 11, 1995, the Appellees entered a Motion to Dismiss or Alternative, Motion for Summary Judgment on the basis that the Appellants had not complied with the notice requirements of the Oklahoma Governmental Tort Claims Act. Said Motion was subsequently granted on December 13, 1995. The Appellants appealed, and on March 5, 1996, the Oklahoma State Court of Appeals Division II upheld the Trial Court's decision. The Appellants then asked for a Writ of Certiorari by the Oklahoma Supreme Court, said writ was subsequently denied on May 22, 1996. Appellants now ask that this Court review and grant Certiorari.

FIRST REASON FOR REVIEW

THE OKLAHOMA GOVERNMENTAL TORT CLAIM'S ACT 51 O.S. §151, ET SEQ. VIOLATED APPELLANT'S DUE PROCESS RIGHTS OF HIS DUEL PROTECTIVE STATUS.

When a given practice is so unfair as to deny due process is always a question of federal constitutional law. Cronnon v. State of Alabama, 557 F.2d 472 (C.A. 5th Cir. 1977), appeal after remand, 587 F.2d 246, cert. denied, 99 S. Ct. 1542, 440 U.S. 974, 59 L.Ed.2d 792 (C.A. 5th Cir. 1979). In the case at hand, the Appellant contends that the provisions set forth in Oklahoma's Governmental Tort Claims Act, 51 O.S. §151 et seq., meet this rule in regards to due process. By denying the Appellant's access to the courts, said Act has denied the Appellant's due process rights and the possibility of being made whole again. "A state's sovereignty is not absolute. State power can only be exercised against a person within the confines of due process of law drawn by its procedural and substantive aspects". U.S.C.A. Const. Amend. 14, Aldens, Inc. v. LaFollette, 552 F.2d 745, cert. denied, 98 S. Ct. 236, 434 U.S. 880, 54 L.Ed.2d 161 (C. A. Wis. 1977). The Appellant contends that both his substantive and procedural due process rights have been violated on the basis that he is a doubly protected individual, as opposed to Oklahoma's restrictive, timely filed notice prerequisites to pursue a claim.

"What due process requires under any given circumstance depends on nature of the government function involved, as well as private interest which is affected by government action." emphasis added. U.S.C.A. Const. Amend. 14, Rehbock v. Dixon, 458 F. Supp. 1056. (D.C. Ill. 1978). Goldberg v. Kelly, 90 S.Ct. 1011 (1970). The Appellants would like to examine the Oklahoma Governmental Tort Claim's Act by evaluating it under the test which has been set forth by federal common law, so as to determine whether the Oklahoma Governmental Tort Claim's Act could be construed as violating the Appellant's due process rights. In the case at bar, the only

governmental interest is being timely notified of a potential claim. The Appellant's interest is the right to be compensated, so as to be whole again, after a state hired pedafile sexually molested the Appellant Belle while he was in school as a minor, and had a mental disability. These incidents further disabled the Appellant's emotional abilities. "Due process has a flexibility determined by time, place, and circumstances; no fixed rules are applicable". (emphasis added) U.S.C.A. Const. Amend. 14, Kennedy v. Robb, 547 F.2d 408, cert. denied, 97 S. Ct. 1325, 430 U.S. 913, 51 L. Ed.2d 592, cert denied, 97 S. Ct. 2687, 431 U.S. 959, 53 L. Ed.2d 278 (C.A. 8th Cir. 1976).

Due process must be determined by what is fair and reasonable in light of the totality of the circumstances; it is a flexible, pragmatic concept. Long v. Thornton Tp. High School Dist. 205, 82 F.R.D. 186 (D.C. Ill. 1979). The circumstances which are set forth in the case at bar constitute the reason for the flexibility of due process. The reason that due process is flexible is so to allow that unjust as well as unconstitutional laws are shown to be so, and thereby abolished by this Court. In the case at bar, the Appellant was put in an atmosphere which was suppose to be conducive to help aid him to overcome his learning disability. Instead, the admitted criminal attacks upon him severely restricted his learning ability.

The Appellant contends that he has substantially complied with the Oklahoma Government Tort Claim's Act, under the exceptions which have been set forth in Oklahoma's Case Law. Lucas v. Independent Public School Dist. #35 of Holdenville, 674 P.2d 1131 (Okl. 1983) "Deprivation of due process may be effected by compliance - as well as by non-compliance, with a State Statute. Statutes as well as people must live up to the Due Process Clause". U.S. C. A. Const. Amends. 5 and 14, Addante v. Village of Elmwood Park, 541 F. Supp. 497 (D.C. Ill. 1982). The Appellant's due process rights have been violated, and Appellant moves that this Court deem the Oklahoma Governmental Tort Claim's Act, O.S. 51 §151 et seq. unconstitutional, because of its statutory restrictions of protective classes.

SECOND REASON FOR REVIEW

THE APPELLANTS SUBSTANTIALLY COMPLIED WITH OKLAHOMA GOVERNMENTAL TORTS CLAIM ACT 51 O.S. §151, ET SEQ.

The Appellants have substantially complied with the notice requirement of the Oklahoma Governmental Tort Claims Act. By the trial court ruling that the Appellants had not done so, and by the trial court dismissing this case, it has violated the Appellants due process rights by wrongfully denying him access to the Courts.

Oklahoma Courts have on numerous occasions recognized substantial compliance to equate to true compliance under the provisions of the Governmental Tort Claims Act, 51 O.S. §151, et. seq. In Conway v. Ohio, 669 P.2d 766 (Okl. 1983), the Oklahoma Supreme Court found substantial compliance with no detriment to the school district when correspondence between the attorney for the injured child and the school district's insurer, discussed the incident. It was held that even though the insurance carrier was not an authorized agent to receive notice under the Governmental Tort Claims Act, substantial compliance had successfully been accomplished. Id. at 767. Conway further stated the purpose of the Governmental Tort Claims Act, that notice is sufficient where the information provided to the governmental entity satisfies the purposes underlying the statutory notice requirements: to promote prompt investigations; to provide early opportunity for correction of dangerous conditions; to promote speedy and amicable settlement of meritorious claims; and to allow the governmental entity to prepare for possible fiscal liabilities. Id. at 767. Lucas v. Independent School District #35, supra at 1131 states: "substantial compliance with notice provision was accomplished when the injured party gave a written statement of the accident to the school district's insurance carrier a week after the accident occurred". Furthermore, Oklahoma Courts ruled substantial compliance in Walker v. City of Moore, 836 P.2d 1289 (Okl. 1992), and stated "although we

commencerate with trial courts which must continuously address the issue of substantial compliance regardless of the applicable statutory provisions, the Supreme Court has recently reiterated its acceptance of the reliance on the doctrine of substantial compliance with the provisions of the act." (Governmental Tort Claims Act). Additionally, the Oklahoma Supreme Court in Rierdon v. Wilburton Bd. of Ed., 611 P.2d 239 (Okl. 1980) found where a letter setting forth a claim that a teacher had injured a student by paddling student using more than ordinary force was sent approximately thirty (30) days after injury, to teacher and president of school board, who discussed the matter and hired an attorney, there was substantial compliance with notice requirement even though the letter was not sent to the clerk of the school board and the letter did not state the amount of compensation sought. Finally, Oklahoma Court of Appeals has taken this doctrine of substantial compliance and has applied it to an even broader sense in Woodrow v. University of Oklahoma, 861 P.2d 1009 (Okl. App. 1993), where substantial compliance to the notice requirement was obtained by the Appellant notifying the Board of Regents by letter of a claim for wrongful termination.

In the case at bar, the Appellant's first attorney in this matter sent notice to the Office of Risk Management, which is in compliance with 51 O.S. Supp. 1993 §156(C) instead of the Office of the Clerk of the Appellee School District, which is the requirement set forth in §156(D), and was the proper place for a political subdivision to be sent notice under the Governmental Tort Claims Act. Appellants attorney informed the attorney for the Appellees' School Board, Mr. Doug Mann, of a claim under the Governmental Tort Claims Act (Affidavit of Charles Richardson hereto attached in Appendix as Exhibit "A"). Also, in a letter dated February 8, 1994 (hereto attached in Appendix as Exhibit "B") sent to Dr. Charles Dodson, the superintendent for the Sapulpa School District, Appellants/Plaintiffs attorney, Charles L. Richardson, mentions that in a meeting Mr. Dodson and the school expressed concern about a potential law suit which may be filed in the future.

The Appellants believe that these two incidents provide substantial compliance with the Governmental Tort Claims Act under the set of exceptions set forth in Conway. The first purpose set forth in Conway is to promote prompt investigations. It is clear by review of the records that an investigation, independent of this lawsuit, had already been done by the Appellees/Defendant Sapulpa School District. Investigation had already taken place because criminal charges had already been brought against the assailant in this case, Appellee Hoppe.

Conway states the second purpose is to provide early opportunity for correction of dangerous conditions. In the case at bar, Mr. Hoppe had already been terminated from his position and jailed. So any dangerous conditions which Mr. Hoppe could have possibly represented had already been eliminated.

The third purpose stated in Conway is to promote speedy and amicable settlement of meritorious claims. The sexual molestation of the Appellant Bell took place on and before November 8, 1993. The Appellants Petition for Negligence was filed on October 18, 1994. Under the Governmental Tort Claims Act, 51 O.S. § 151 et. seq., the injured party has one (1) year to file notice. Then, the State or political subdivision has ninety (90) days in which to respond to or have their claim denied by the State or political subdivision, which then allows the injured party to file lawsuit within one hundred and eighty (180) days. In the case at bar, the suit was filed before the one (1) year time period for an injured party to put the State or political subdivision on notice of a claim. So it is clear to see that the prompt, speedy and amicable clause for the purpose of the Governmental Tort Claims Act has been satisfied.

The final purpose listed in Conway is to allow the governmental entity adequate time to prepare for possible fiscal liability. It is clear that the affidavit of Attorney Richardson, which states that discussions of a lawsuit took place before written notice of claim was sent to Appellees, constitutes adequate time for preparation. Additionally, the letter dated February 8, 1994 from Richardson to Attorney Dodson indicates sufficient time for Appellees to prepare for possible fiscal

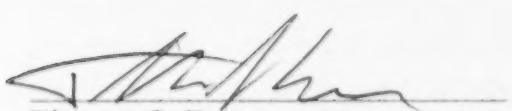
liabilities. Appellees had already hired an attorney to represent them, which indicates their knowledge of Appellant's potential claims. The School District was aware of a possible fiscal liability due to Hoppe's actions when he was arrested and jailed in Appellee's presence.

CONCLUSION

The Oklahoma Governmental Tort Claim's Act, 51 O.S. §151 et seq., as applied to Appellant, is unconstitutional and is violative of Appellant's substantive and procedural due process rights afforded to him by the Fifth (5th) and Fourteenth (14th) Amendment to the Constitution of the United States. Appellant has substantially complied with said Act insofar as the time restraints set forth, as well as to the manner and fashion of notice sent to the State of Oklahoma, to the Office of Risk Management. Appellant has further substantially complied with 51 O.S. §151 et seq. by notifying both the already hired attorney for Appellee School District, as well as the Superintendent of the School in which the molestation of the Appellant took place.

WHEREFORE, premises considered, Appellant prays that this Court grant Appellants Petition for Writ of Certiorari for the reasons stated above and for any such further relief this Court deems equitable and just.

Respectfully submitted,



Thomas S. Evans

Case No. CJ 94-569
FILED IN DISTRICT COURT
CREEK COUNTY,
SAPULPA, OK

95 SEP 25 AM 10:25

PAT HOBBS,
COURT CLERK

AFFIDAVIT OF Charles L. Richardson

The undersigned, Charles L. Richardson, does hereby certify as follows:

1. That I am of legal age and of sound mind;

2. That our firm represented Louis Bell from November 29, 1993, to approximately May 1994;

3. That Thomas S. Evans requested Louis Bell's file and received the same on June 24, 1994;

4. That during our firm's representation of Mr. Bell, I had numerous contracts with Doug Mann, who represented to me that he was the attorney for the Sapulpa Public Schools;

5. That these contacts included telephone calls, letters, and meetings;

Exhibit "A"

6. That during these contacts, discussions between Mr. Mann and myself included a lawsuit being filed on behalf of Mr. Bell against the Sapulpa Public Schools and Tim Hoppe, a teacher's aide at Sapulpa Public Schools;

7. That the discussions of a lawsuit came as a result of the lack of cooperation on the part of Mr. Mann and school officials;

8. That I was informed by school officials that a complete investigation had been conducted surrounding the allegations of Mr. Bell and his grandmother, Clara Redding;

9. That on April 4, 1994, Dr. Dow Greg McCarty was mailed medical records by all three of the doctors treating Mr. Bell;

10. That these records included discussions with Mr. Bell surrounding the incident with Mr. Hoppe;

11. That on April 29, 1994, via letter, Superintendent Dodson acknowledged the event had occurred but did not constitute it as a traumatic event; and,

12. That all these communications with Mr. Mann took place prior to Mr. Evans' representation of Mr. Bell.

AFFIANT FURTHER SAITH NOT.

/s/ Charles L. Richardson
Charles L. Richardson, Affiant

STATE OF OKLAHOMA)
) ss.
COUNTY OF TULSA)

Subscribed and sworn to before me this 25th day of September, 1995.

/s/ Christina Citty
Notary Public

(Seal)

My Commission Expires:

08-30-98

RICHARDSON, STOOPS & KEATING

Attorneys at law

From the Desk of:

Charles L. Richardson

February 8, 1994

Dr. Charles Dodson
Sapulpa School District
1 South Mission
Sapulpa, OK 74066

Dear Dr. Dodson:

This letter is to follow up our conversation on February 8, 1994 wherein you had an appointment with Mrs. Clara Redding and myself. As you are well aware, this meeting was called as a result of the letter you sent to Mrs. Redding regarding her being reported to the District Attorney's Office in Sapulpa for Louis Bell's absences. As a result of that letter, Mrs. Redding sent you a letter requesting a meeting at your suggestion.

As I am sure you are well aware and as we discussed today in our meeting, Mrs. Redding has already met with school representatives on a previous day regarding Mr. Bell. At this meeting Mrs. Reeding had several questions regarding the education or lack thereof regarding Mr. Bell. She has been unable to get any cooperation from the school in attempting to transfer Louis to another school, allow him to be homebound and taught, or any other solutions. The only objective solution that was given to her was to transfer him back to where he was prior to being sexually molested at your school. That meant putting him back into classes that the administration felt were not meeting the needs that he had. Therefore, I don't see where that is a good solution or even one worth considering.

Exhibit "B"

Back to the meeting on the 8th; Mrs. Redding and I showed up prior to our 11:00 meeting at which time we waited approximately twenty minutes in your lobby. After waiting, you escorted us to your office and had another lady join us. At that point you told me that I would have to leave or you would not have any conversation with Mrs. Redding. I informed you at that time that Mrs. Redding was becoming quite irritated and aggravated at the school for their lack of taking any positive corrective steps and that she had a meeting a couple of weeks earlier in an attempt to have some of the matters resolved but that she was put off and/or her questions were not answered. On the questions that she did raise, she finally called the Oklahoma Education Department and found out that she was in fact correct and that the answers she received were false. At that, you asked if Mrs. Redding could talk and as I told you, she was there for her meeting and no one was stopping her from talking at which time she told you, at your request, that she wanted me to stay because she was not getting anywhere on her own.

At this time you told me to cancel the meeting. As you were aware, I told you that I was there for the meeting and we had every intention of continuing the meeting. To this you informed me that you would have to call the meeting off. The reason for you calling the meeting off was because you did not have your attorney present. You did not offer any future date or time to continue the meeting nor did you offer any suggestions as to how the meeting could be facilitated in order to meet the needs of Louis Bell.

I would appreciate a meeting being set in the immediate future so that Louis Bell can be take care of. It is my impression from your actions that you don't care whether Louis returns to school or not. The only a

concern you and the school seem to be concerned about is whether lawsuit is going to be filed against the school. It appears that you are trying to hide something or not confront the problem which is at hand.

I would appreciate you taking immediate notice of this letter. If you have any questions, please do not hesitate to call me.

Best regards,

/s/ Charles L. Richardson

Charles L. Richardson
For the Firm

CLR:so

APPENDIX

IN AND FOR THE DISTRICT COURT OF CREEK COUNTY
STATE OF OKLAHOMA

CLARA REDDING, individually and as legal guardian of PATRICK LOUIS BELL, a minor,	)	**FILED IN DISTRICT COURT Creek County, Sapulpa, OK**
Plaintiff,	)	
vs.	)	**95 DEC 13 AM 11:19**
BOARD OF EDUCATION, SAPULPA SCHOOL DISTRICT, STATE OF OKLAHOMA, SAPULPA MIDDLE SCHOOL, TIMOTHY LYNN HOPPE, an individual, DR. CHARLES B. DODSON, SUZANNE WILLIAMS, DOES 1-25,	)	**PAT HOBBS, COURTCLERK**
Defendants.	)	**Case No. CJ 94-569**

JOURNAL ENTRY OF JUDGMENT

On October 23, 1995, this matter came on for decision on the defendants' motion to dismiss or alternative motion for summary judgment. This matter was previously argued to the court on September 25, 1995, at which time the plaintiff was represented by Thomas S. Evans of Evans Law Center and the defendants, the Sapulpa School District, Dr. Charles DODSON and Suzanne Williams (hereafter "the School District Defendants"), were represented by J. Douglas Mann of Rosenstein, Fist & Ringold. After hearing argument of counsel and reviewing the entire court file with regard to this matter the court found as follows:

1. The School District Defendants' motion to dismiss or alternative motion for summary judgment should be treated as a motion for summary judgment.

2. The School District Defendants' motion for summary judgment should be sustained and this case should be dismissed as against the School District Defendants only for the plaintiff's failure to substantially comply with the notice requirements of 51 O.S. §156.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the School District Defendants' motion for summary judgment is sustained.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is granted to the School District Defendants only against the plaintiff on all of the plaintiff's claims and that this case is hereby dismissed against the School District Defendants only.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the court finds that the plaintiff's claims against the School District Defendants have been fully adjudicated. The court directs the preparation and filing of this final judgment as to all of the plaintiff's claims against the School District Defendants only because the court has determined that there is no just reason for delay in the filing of a final judgment on the plaintiff's claim against the School District Defendants. This determination and directive are made pursuant to OKLA. STAT. Title. 12, §994A (Supp. 1995).

/s/ Donald D. Thompson
Judge of the District Court

APPROVED AS TO FORM:

/s/ Thomas S. Evans
Thomas S. Evans, OBA #10642
Evans Law Center
P.O. Box 2646
Ponca City, OK 74602

Attorney for Plaintiff

/s/ J. Douglas Mann
J. Douglas Mann, OBA #5663
Rosenstein, Fist & Ringold
525 South Main, Suite 700
Tulsa, OK 74103-4500

Attorneys for Defendants, the
Sapulpa School District,
Dr. Charles Dodson and Suzanne
Williams

FILED
COURT OF APPEALS
STATE OF OKLAHOMA

MAR 5 - 1996

JAMES W. PATTERSON
CLERK

IN THE COURT OF APPEALS, DIVISION 2
STATE OF OKLAHOMA

CLARA REDDING, individually and as legal guardian of PATRICK LOUIS BELL, a minor,	)	
Appellant,	)	
vs.	)	No. 86,561
INDEPENDENT SCHOOL DISTRICT NO. 33 OF CREEK COUNTY, OKLAHOMA a/k/a BOARD OF EDUCATION; SAPULPA SCHOOL DISTRICT; STATE OF OKLAHOMA a/k/a SAPULPA MIDDLE SCHOOL; DR. CHARLES B. DODSON; SUZANNE WILLIAMS; and, JANE AND JOHN DOES 1-25,	)	NOT FOR PUBLICATION
Appellees,	)	
and	)	

TIMOTHY LYNN HOPPE, an individual,

Defendant.

APPEAL FROM THE DISTRICT COURT OF
CREEK COUNTY, OKLAHOMA

Honorable Donald D. Thompson, Trial Judge

Thomas S. Evans
Evans Law Center
Ponca City, Oklahoma — For Appellant

J. Douglas Mann
Rosenstein, Fist & Ringold
Tulsa, Oklahoma — For Appellees

MEMORANDUM OPINION

STUBBLEFIELD, J.

This is plaintiff's appeal from grant of summary judgment to the school district defendants based on a finding that plaintiff failed to comply with notice provisions set forth in the Governmental Tort Claims Act. 51 O.S. 1991 & Supp. 1993 §§ 151-172. The appeal was assigned to the accelerated docket pursuant to 12 O.S. Supp. 1995, ch. 15, app. 2. Based on our review of the record on appeal and applicable law, we affirm.

The record reveals that on November 8, 1993, Patrick Louis Bell (Louis), a minor and special education student at Sapulpa Middle School, was sexually assaulted at school by a teacher's aide, Timothy Lynn Hoppe.

Louis's grandmother and legal guardian, Clara Redding, retained an attorney on November 28, 1993. The attorney prepared a "Tort Claim Notice," dated January 26, 1994, but did not file the notice with the office of the clerk of the school district, as required by 51 O.S. Supp. 1993 § 156(D), for asserting a claim against a political subdivision. Instead, the attorney followed the procedure set forth in section 156(C), for asserting a claim against the State of Oklahoma, and filed notice with the "Office of the Risk Management Administrator" of the Purchasing Division of the Office of Public Affairs in Oklahoma City.

Louis returned to school for only two days following the incident, apparently as a result of his grandmother's concern that he would suffer psychological harm from returning to the classroom. On December 2, 1993, Janet Vernon, Principal of Sapulpa Middle School, write to Mrs. Redding expressing her concern about Louis' nonattendance and inquired as to when he would return to school. This prompted a phone call from Mrs. Redding's attorney, Charles L. Richardson, to the school district's attorney, which phone call Richardson documented by letter dated December 9, 1993. The letter provided, in part:

> My contacting you and your office was the result of my conversation with Charles Dodson [sic] involving the letter received by Mr. Bell's guardians concerning his failure to attend school. As we discussed in our conversation, you are well aware of the allegations and the arrest of Tim Hoppe in connection with the incident where Mr. Bell was molested. Our phone conversation was to discuss the possibility of transferring Mr. Bell to another school district so that he could continue his education.
>
> . . . .

> As you are aware, the transfer [request] came about as a result of Mr. Bell returning to school and being faced with some complications. Those complications being that several students and teachers were upset that Tim Hoppe had been removed from the school. Mr. Bell then went to see Mr. Jernigan who was seeing him after the molestations occurred and Dr. Jernigan recommended that he not return to the Sapulpa school.

On December 15, 1993, the attorney for the school district responded:

> I am in receipt of your letter of December 9, 1993, with regard to [Louis Bell]. While your letter did not call for a response, I feel that one is necessary in light of several gratuitous and inaccurate statements in your letter.
>
> . . . .
>
> Third, I never indicated to you that I had any "authority" from the Sapulpa School District. What I advised you was that the Sapulpa School District is perfectly capable of meeting <u>all</u> of the needs of Louis Bell. It would be a waste of taxpayers' money for the Sapulpa School District to approve a transfer to the Jenks School District or any other school district and have to pay for the identical services that its very competent staff can render to Louis.
>
> Fourth, an investigation has been done of the allegations "that several teachers and students were upset that Tim Hoppe had been removed from the school." I am advised that this allegation is wholly false. In fact, when Louis returned for two days, neither he nor anyone else mentioned the incident and, I am

> advised, he had two very successful days. Any suggestions to the contrary are quite simply untrue.
>
> . . ..
>
> I look forward to receiving the letter regarding Mr. Jernigan's opinions concerning Louis.

The record reflects additional telephone conversations, meetings and correspondence after that date between Sapulpa School Superintendent, Dr. Charles Dodson, Mrs. Redding, a psychologist and the attorneys -- all dealing with the issue of the requested transfer and evaluation of Louis' educational and psychological needs. The correspondence continued until August 31, 1994, when the Director of Special Services wrote to Mrs. Redding and denied a due process hearing on the transfer because Louis' residence had changed and he was attending school in another district.

Plaintiff obtained new counsel. She filed her original petition on October 18, 1994, but failed to immediately accomplish service. She filed an amended petition on March 15, 1995, prior to any responsive pleading. The petition named the School District and individuals employed by the district as defendants. Plaintiff alleged that the School District defendants knew or should have known of Hoppe's tendencies to commit sexual assaults and that they failed to investigate his background at the time he was hired.

Defendants Dodson, Williams and the School District filed a motion to dismiss/summary judgment asserting that the trial court lacked subject matter jurisdiction and that Plaintiff's action was barred due to failure to properly file notice of the claim within one year after the loss occurred. Defendants Dodson and Williams further asserted that, because they were acting within the scope of their employment with the School District, Plaintiff could not assert claims against them as individuals. Sections 153(B) and 163(C). Defendants attached to their motion the supporting affidavit of Dr. Dodson.

Plaintiff opposed the motion but did not dispute Defendants' statement of material facts. Instead, she claimed actual or substantial compliance with notice provisions based on notice of claim to the School District "in care of" the Office of Risk Management. She also claimed substantial compliance based on the "numerous correspondences" between her first attorney of record and the School District.

Defendants filed a reply brief and attached a second affidavit of Dr. Dodson, along with copies of correspondence that the School District or its attorneys received from or sent to Plaintiff or her attorney. Dr. Dodson's affidavit stated:

> 3. At no time did I, the clerk of the board of education of the Sapulpa School District, any member of the board of education or any authorized representative of the Sapulpa School District, receive from the Office of the Risk Management Administrator for the State of Oklahoma or from any other person any notice of a tort claim by Clara Redding or on behalf of Clara Redding or Patrick Louis Bell.
>
> . . . .
>
> All of this correspondence related to the decision by Ms. Redding not to return her ward, Patrick Louis Bell, to the Sapulpa School District and her efforts to obtain a transfer for him to another school district. None of this correspondence contained any notice that Ms. Redding desired to assert a tort claim against the Sapulpa School District.

This matter was set for hearing on September 25, 1995. On that day, Plaintiff filed an affidavit of her former attorney, Charles L. Richardson, who stated that: (1) His firm represented Louis until approximately May 1994; (2) Due to "lack of cooperation," his discussions with the School District's attorney included "a lawsuit

being filed on behalf of [Louis] against the Sapulpa Public School;" (3) He was informed by school officials that a "complete investigation" had been conducted surrounding the allegations of Louis and Mrs. Redding; and, (4) The School District psychologist, Dr. McCarty, was mailed medical records by Louis' treating doctors.

The trial court found that Defendants' motion should be treated as a motion for summary judgment and sustained the motion based on its finding that Plaintiff had failed to substantially comply with the notice requirements of section 156. Plaintiff appeals.

Plaintiff raises two issues in her petition in error -- whether she actually or substantially complied with notice of claim provisions and whether the statue of limitations in the Governmental Tort Claims Act applies to "mentally retarded minors." With regard to the latter issue, we note that it was not raised in the trial court. We will not consider an issue raised for the first time on appeal from grant of summary judgment Indiana Nat'l Bank v. State Dept. of Human Services, 857 P.2d 53 (Okla. 1993).

It is clear from the record that Plaintiff did not comply with section 156(D), the notice provision applicable to a claim against a political subdivision. Plaintiff's first attorney filed notice of claim in a mistaken reliance on section 156(C), which clearly is applicable only to claims asserted against the state. Based on uncontroverted evidentiary materials, this incorrect notice attempt did not result in notice to the School District. No actual notice was given to the School District. Although strict compliance with the notice provisions of the Act is not required, Rierdon v. Wilburton Board of Education, 611 P.2d 239 (Okla. 1980), substantial compliance has generally been based on some notice to the proper political subdivision that, though not in strict compliance with statutory requirements, was determined legally sufficient. Thus, we concluded that the improper service to the wrong entity, which did not result in actual notice to the political subdivision, is not substantial compliance with statutory provisions.

In order to determine whether there was substantial compliance, we must look to any actual notice given, which need not be in writing. Duesterhaus v. City of Edmond, 634 P.2d 720 (Okla. 1981). Viewing the summary judgment record in a light most favorable to Plaintiff, we

must conclude, for the following reasons, that the evidentiary materials regarding communication between Plaintiff and Defendants demonstrated a lack of substantial compliance with section 156(D).

Notice of an alleged tort and accompanying injury is not the equivalent of notice of a claim for monetary relief or compensation as a result of the incident and is insufficient under the Act. Graves v. Rose, 663 P.2d 733 (Okla. 1983). For example, oral notice to a school counselor and superintendent that an incident occurred which "hurt" the minor plaintiff did not constitute notice of a claim for relief and thus denied the school district the opportunity to promptly investigate and quickly settle the claim if it were determined to be meritorious. Maxwell v. Independent Sch. Dist. 32 of Okfuskee County, 672 P.2d 1179, 1181 (Okla. Ct. App. 1983).

The claim for relief is a critical component of any notice, and we can find no holding of substantial compliance without such a demand. In Duesterhaus, the plaintiffs verbally notified the city attorney of their claim and had negotiated with him concerning settlement. Finding this to be sufficient notice under the Act, the court stated:

> We fail to see how the City could have suffered any prejudice when the municipal counselor was actually engaged in settlement negotiations, and the claim was under investigation. Although notice to the municipal counselor is an unauthorized procedure outside the purview of the Act, in this instance we find that the notice was sufficient to constitute substantial compliance.

Id. at 723. Actual settlement negotiations would constitute notice of demand for relief.

In the present matter, Plaintiff had not claimed, and the evidentiary materials do not reveal, that any settlement negotiations took place between the parties. The correspondence shows that Louis' medical records were sent to the school for purposes of evaluating his "Individualized Education Progrsm," the issue of his transfer to another

district, and whether it would be psychologically detrimental to Louis to attend school at other facilities in the Sapulpa school system. The medical records were not sent for purposes of establishing a claim for money damages.

Although Plaintiff's first attorney swore, in his affidavit, that school officials had conducted a "complete investigation" surrounding Plaintff's claims, the correspondence indicates that the "investigation" by school officials actually involved allegations of teachers and students being upset with Louis over Hoppe's removal from the school. Furthermore, the attorney did not aver that he had demanded monetary relief in any of his conversations with the School District's attorney. And, the "lack of cooperation" he referred to in his affidavit is shown by the correspondence to be related to attempts to transfer Louis to another school.

The meetings that took place and the discussions between the parties and their attorneys were well documented in their correspondence. Although Plaintiff's first attorney thought that he had provided the School District with written notice of a claim in late January 1994, clearly he had not. The subsequent correspondence demonstrates that the School District, as a result of the molestation incident, had no "actual notice of a claim for monetary redress." Maxwell, 672 P.2d at 1181.

We cannot find in the months of correspondence between the parties or their counsel any statement that constitutes a claim for monetary relief against the School District. The correspondence was directed toward the transfer issue and the School District's ability to meet Louis' educational needs. This case is distinguishable from Lucas v. Independent School District No. 35 v. Holdenville, 674 P.2d 1131 (Okla. 1983), where written notice of claim was provided to the school district's insurance carrier within one week of the accident.

In view of the foregoing, we find that the trial court did not err in determining that Plaintiff did not substantially comply with the notice provisions of the Act. Accordingly, the trial court's order grant summary judgment in favor of Defendants is AFFIRMED.

GOODMAN, P.J., and BOUDREAU, J., concur.

FILED
SUPREME COURT
STATE OF OKLAHOMA

MAY 22 1996

JAMES W. PATTERSON
CLERK

IN THE SUPREME COURT OF
THE STATE OF OKLAHOMA

Wednesday, May 22, 1996

THE CLERK IS DIRECTED TO ISSUE
THE FOLLOWING ORDERS:

86,256 SMS Financial, L.L.C., an Arizona limited liability company v. James A. Ragland, an individual et al.
Certiorari denied.
CONCUR: Kauger, V.C.J., Hodges, Lavender, Simms, Opala, Summers, Watt, JJ.
DISSENT: Wilson, C.J., Hargrave, J.

86,561 Clara Redding, individually and as legal guardian of Patrick Louis Bell, a minor, v. Independent School District No. 33 of Creek County, Oklahoma a/k/a Board of Education, Sapulpa School District et al.
Certiorari denied.
CONCUR: Hodges, Lavender, Simms, Hargrave, Summers, Watt, JJ.
DISSENT: Wilson, C.J., Kauger, V.C.J., Opala, J.

86,695 Mary Jane Wilson v. William Slater, M.D. and Jackson County Memorial Hospital.

Certiorari denied.
CONCUR: Wilson, C.J., Kauger, V.C.J., Hodges, Lavender, Opala, JJ.
DISSENT: Simms, Hargrave Summers, JJ.
NOT PARTICIPATING: Watt, J.

87,181 Dolly B. Richie, Personal Representative of the Estate of Darrell Edwin Richie, Deceased and Dolly B. Richie, individually v. Grady Memorial Hospital Authority d/b/a Grady Memorial Hospital et al.
Petition for certiorari to review a certified interlocutory order is denied.
All Justices concur.

87,271 Eugene Crumm, as surviving son and on behalf of all heirs at law of Goldie Crumm, Deceased v. Aleta May Beach.
Petition for certiorari to review a certified interlocutory order is denied.
All Justices concur.

87,317 Miles B. Jacobs, as Personal Representative of the Estate of Cheryl Jacobs, Deceased v. The Honorable Sam C. Fullerton, III, District Court Judge etc.
Application to assume original jurisdiction is denied.
CONCUR: Lavender, Simms, Hargrave, Summers, Watt, JJ.
DISSENT: Wilson, C.J., Kauger, V.C.J., Hodges Opala, JJ.

87,334 W. T. Lewis, Sr. by and through his legal guardian Christina Hoover v. Pleasant Valley Nursing Care Center (an Oklahoma corporation).
Petition for certiorari to review a certified interlocutory order is denied.
All Justices concur.

Petition for certiorari to review a certified interlocutory order is denied.

All Justices concur.

87,356 F. W. Qaddiffi Rasheed v. Virgil Neuenschwander, Major etc. et al.

Application to assume original jurisdiction is denied.

CONCUR: Wilson, C.J., Kauger, V.C.J., Hodges, Lavender, Simms, Hargrave, Summers, Watt, JJ.

Opala, J., dissenting

I would transfer this cause to the District Court of Oklahoma City.

/s/ Alma Wilson

CHIEF JUSTICE

CERTIFICATE OF SERVICE

This will certify that on this 16th day of August, 1996, three (3) true and correct copies of the above and foregoing was mailed by U.S. Mail to Doug Mann, Attorney for Independent School District No. 33 of Creek County, Oklahoma, a/k/a Board of Education, Sapulpa School District, State of Oklahoma, a/k/a Sapulpa Middle School, of ROSENSTEIN, FIST & RINGOLD, 525 South Main, Suite 700, Tulsa, OK 74103 (918-585-9211) with postage fully prepaid thereon.

Thomas S. Evans